case, that the pledgee is under no duty to sue. *Black River Bank* v. *Page*, 44 N. Y. 453; *Rice* v. *Benedict*, 19 Mich. 132; *Smith* v. *Felton*, 85 Ind. 223. But see *Wakeman* v. *Gowdy*, *supra*. This is especially true where the pledgor makes no tender covering the expense of litigation. *Wells & Dewing* v. *Wells & Scriber*, 53 Vt. 1. See *Culver* v. *Wilkinson*, 145 U. S. 205, 213. Although the pledgee's assent and subsequent failure to foreclose might constitute such negligence as to render him liable, yet if the pledgor had notice of this inaction and an opportunity to protect himself, the pledgee would not be liable. See *City Savings Bank* v. *Hopson*, 53 Conn. 453, 457.

QUASI-CONTRACT — RECOVERY OF MONEY PAID UNDER MISTAKE OF FACT — PAYMENT BY MISTAKE ON A POST-DATED CHECK. — A bank paid the payee of a post-dated check, not noticing the future date. After payment, but before the date of the check, the drawer ordered payment stopped. The bank sought to recover the amount from the payee. *Held*, defendant's ignorance that the bank paid under a mistake is not a sufficient defense. *Second National Bank of Reading* v. *Zable*, 66 Pitts. L. J. 774.

Generally, one who pays another money under a mistake of fact may recover. *Hummel* v. *Flores*, 39 S. W. 309 (Texas); *United States* v. *Phillips*, 21 D. C. 309. The purpose of allowing such a quasi-contractual action is to prevent the unjust enrichment of the defendant. *Moses* v. *McFerlan*, 2 Burr. 1005, 1012. There is no recovery, therefore, in cases where the plaintiff, though under a duty to pay, paid under a mistake as to the nature of his obligation or legal liability. *Johnson* v. *Hernig*, 53 Pa. Super. Ct. 179; *Buel* v. *Boughton*, 2 Den. (N. Y.) 91; *Morrison* v. *Payton*, 31 Ky. L. Rep. 992, 104 S. W. 685. And recovery is not allowed when the defendant has with honesty so changed his position that if the plaintiff recovered, he could not be restored to his former status. *Bend* v. *Hoyt*, 13 Pet. (U. S.) 263; *Behring* v. *Somerville*, 63 N. J. L. 568, 44 Atl. 641. From the foregoing it would seem that in the principal case the bank should recover. The law, however, for commercial security treats banks more strictly, and in the absence of fraud, denies them recovery for money paid the holders of checks under mistake as to the sufficiency of the funds of the drawers or their solvency. *National Exchange Bank* v. *Ginn*, 114 Md. 181, 78 Atl. 1026; *American National Bank* v. *Miller*, 185 Fed. 338. The present case seems to relax the strict rules.

RAILROADS — STATE REGULATION — UNLAWFUL INTERFERENCE WITH INTERSTATE COMMERCE. — A Missouri statute prohibits railroad corporations from issuing mortgage bonds without authority from the Public Service Commission, imposes heavy penalties for violation of the statute and purports to invalidate bonds so issued. (1913, MO. LAWS, 592, 593, 600.) The commission is required to charge a fee proportionate to the value of the authorized issue. (*Ibid.*, 567.) The plaintiff company is a Utah corporation engaged in interstate transportation, a small part of its line extending into Missouri. The company applied to the Missouri Public Service Commission for a certificate authorizing it to issue $31,848,900 worth of bonds secured by a mortgage on its entire interstate line. The commission granted the authority, charging a fee of $10,962.25. The company accepted the grant under protest, alleging that the fee was an unconstitutional interference with interstate commerce. The Supreme Court of Missouri held that the company by accepting the benefits was estopped to assert the invalidity of the fee. (In a subsequent case the Missouri court held the statute inapplicable to foreign corporations. *Public Service Commission* v. *Union Pac. R. R. Co.*, 271 Mo. 258.) On appeal to the United States Supreme Court, *held*, the charge was an unlawful interference with interstate commerce, the company not being estopped to assert its illegality, since the payment was under duress. *Union*

Pac. R. R. Co. v. *Public Service Commission*, U. S. Supreme Court, October Term, 1918, No. 65.

A corporation, in accepting the benefits permitted by statute, estops itself from contesting the validity of the statute. *Minneapolis & St. L. Ry. Co.* v. *Gowrie & N. W. Ry. Co.*, 123 Iowa, 543, 99 N. W. 181; *Commonwealth* v. *Southern Pac. Co.*, 150 Ky. 97, 149 S. W. 1105. If, however, accepting the benefits is not a voluntary act, but is procured by duress, no estoppel is created. See *Cicotte* v. *Wayne*, 59 Mich. 509, 513, 26 N. W. 686, 687; BIGELOW, ESTOPPEL, 6 ed., 646. In the principal case, it appears that the payment of the fee in return for the certificate was an act under duress. The issuance of the mortgage bonds was necessary to reimburse the railroad company for expenditures upon its property. Without the certificate, the bonds would be not only unmarketable but, if the statute were held applicable, would be absolutely void, and the corporation would be subject to heavy penalties. *Scottish Union & National Ins. Co.* v. *Herriott*, 109 Iowa 606, 80 N. W. 665; *Swift* v. *United States*, 111 U. S. 22. It is true the Missouri court later held the statute inapplicable, but the corporation was not bound to take the risk of the court deciding otherwise. *Atchison, T. & S. Fe Ry. Co.* v. *O'Connor*, 223 U. S. 280. Accordingly, the jurisdiction of the United States Supreme Court was not excluded on the ground that the company waived its federal rights. *Crosswill* v. *Grand Lodge*, 225 U. S. 246. Since the charge for the certificate was fixed in proportion to the value of the bonds issued, the same being secured by railroad property most of which was in states other than Missouri, the burden on the railroad was apparently so heavy as to constitute an illegal interference with interstate commerce. *Cf. Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1; *International Paper Co.* v. *Massachusetts*, 246 U. S. 135. See JUDSON, INTERSTATE COMMERCE, 3 ed., §§ 21, 22, 39.

SEAMEN — SEAMEN'S ACT OF 1915 — DEDUCTIONS IN AMERICAN PORT OF ADVANCES MADE TO FOREIGN SEAMEN BY A FOREIGN VESSEL IN FOREIGN PORT. — The Seamen's Act (38 STAT. AT L. 1165) provides that "every seaman of a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs a one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void. Any failure on the part of the master to comply with this demand shall release the seaman from his contract, and he shall be entitled to full payment of the wages earned. . . . This section shall apply to seamen of foreign vessels while in the harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement." A British vessel in a British port made advances to the seamen, a lawful and customary practice by the law of England. On arriving in an American port the seamen demanded half the wages earned. The master deducted the advances made in Liverpool, and the seamen deserted and libeled the ship. *Held*, the libellants cannot recover. *The Talus*, U. S. Supreme Court, October Term, 1918, No. 392.

It is well established that advances made to seamen by any vessel, American or foreign, in any port of the United States are within the statute and illegal. *The Eudora*, 190 U. S. 169; *The Kestor*, 110 Fed. 432. See 15 HARV. L. REV. 411. The cases are in conflict as to advances made in a foreign port by an American or foreign vessel where by the law of such foreign country advances are allowed. *The Windbrush*, 250 Fed. 180; *The Imberhorne*, 240 Fed. 830; *The Ixion*, 237 Fed. 142; *The Belgier*, 246 Fed. 966. See 31 HARV. L. REV. 1169. The reasons for allowing such advances to be deducted on reaching an American port are that the contract is good by the law of the place where made, that Congress had no intention of rendering such contract void or of